

NOTICE

*This is a summary disposition issued under Alaska Appellate Rule 214(b). Summary disposition decisions of this Court do not create legal precedent and are not available in a publicly accessible electronic database. See Alaska Appellate Rule 214(d).*

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

MARJORIE LABRIOLA,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-12883  
Trial Court No. 3PA-14-01713 CI

SUMMARY DISPOSITION

No. 0048 — June 26, 2019

Appeal from the Superior Court, Third Judicial District, Palmer,  
Jonathan A. Woodman, Judge.

Appearances: Jason A. Weiner, Gazewood & Weiner, PC,  
Fairbanks, under contract with the Office of Public Advocacy,  
Anchorage, for the Appellant. Ann B. Black, Assistant Attorney  
General, Office of Criminal Appeals, Anchorage, and Jahna  
Lindemuth, Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, Fabe, Senior Supreme Court  
Justice, and Andrews, Senior Superior Court Judge.\*

Marjorie Labriola appeals the dismissal of her application for post-conviction relief. In her application, Labriola argued that her attorney communicated confidential information to her third-party custodians; that the third-party custodians

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\* Sitting by assignment made pursuant to Article IV, Section 11 of the Alaska Constitution and Administrative Rule 23(a).

used this information to pressure Labriola into accepting a plea deal; that her attorney's breach of confidentiality caused a breakdown in the attorney-client relationship; and that, but for her attorney's conduct, Labriola would not have taken the plea deal.

Labriola's attorney filed an affidavit denying that she improperly communicated with Labriola's third-party custodians. In response, Labriola did not file an affidavit from any third-party custodian; instead, she filed her own affidavit containing conclusory allegations of improper communication. Labriola asserted, for example, that her attorney "was actively communicating with [her] third-party custodians about the [plea deal]" and that "the contents of the communication concerned substantive legal issues surrounding why [she] should take the deal." But Labriola's affidavit never explained how she knew this information or what the allegedly improper communications actually were.

The superior court dismissed Labriola's application because, *inter alia*, Labriola's affidavit contained only conclusory allegations and failed to put forth any admissible evidence, based on personal knowledge, of improper communications between Labriola's attorney and any third-party custodian.

Labriola now appeals. We have reviewed the record and the pleadings in this case and agree with the superior court. An affidavit filed in support of an application for post-conviction relief must be based upon personal knowledge and must set forth facts based on evidence that would be admissible at trial.<sup>1</sup> By contrast, Labriola's affidavit, which provided the only factual support for her claim of attorney misconduct, failed to state what her attorney actually said to her third-party custodians and failed to explain how Labriola had personal knowledge of these presumably private

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<sup>1</sup> *Allen v. State*, 153 P.3d 1019, 1025 (Alaska App. 2007).

conversations. Instead, it consisted primarily of conclusory allegations concerning the legal effect of the communications.

Therefore, the judgment of the superior court is AFFIRMED.